IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 3239 OF 2005
IN
SUIT NO. 4071 OF 2005.

Bank of Maharashtra. ... Plaintiff.
Versus.
Kapadia Trading Co. and others. ... Defendants.

Shri Vinayak Sawant i/by Shri N.K.Kamat for the Plaintiff.

None for the Defendant.

CORAM : ABHAY S.OKA, J.

DATED : 28th August, 2007.

P.C.:

1. Heard the learned Counsel for the Plaintiff in support of the Notice of Motion. He states that the Notice of Motion has been duly served to the Defendant.

2. On 5th March 2007 the suit filed by the Plaintiff was dismissed in default as the Plaintiff and their Advocates were absent.

3,. In the affidavit-in-support of the Notice of Motion, it is stated that on 26th February 2003 when the suit appeared before the learned Prothonotary and Senior Master, none appeared for the Plaintiff as the Advocate’s Clerk did not inform the fact that suit was listed on board on 26th February 2003. It stated that due to the shifting of the office of the Plaintiff’s Advocate in January 2005, he lost track of the suit.

There is no reply filed by the Defendant. Hence a case for passing an order for restoration of the suit is made out. Notice of Motion is, therefore, made absolute in terms of prayer clause (a). The Plaintiff is directed to serve fresh writ of summons to the Defendants within a period of 12 weeks from today. If writ of summons is not served and affidavit of service is not filed within the stipulated time, the suit will stand dismissed for want of prosecution without further reference to the Court.

Judge.